IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1593 OF 2006
AND
CRIMINAL WRIT PETITION NO.1594 OF 2006

Shri Mahendra Indermal Borana ...Petitioner
(In both the Petitions)

Vs.

Shri Anil Shankar Joshi & Anr. ....Respondents
(In both the Petitions)

Shri Sandesh D. Patil for the Petitioner in both the Petitions.

Shri Rajesh More, A.P.P. for the State in both the Petitions.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 22, 2006.

P.C.:

1. Heard Shri Patil appearing for the Petitioner.

By this Petition filed under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the Petitioners have challenged the orders passed on 29th June, 2006 by the learned 8th Adhoc Additional Sessions Judge, Pune. The facts of both the Petitions are identical and therefore, I am referring to the facts of the case in Writ Petition No.1593 of 2006.

2. The Petitioner is an accused in a complaint filed under section 138 of the Negotiable Instruments

Act, 1881 by the first Respondent. The complaint resulted in conviction of the Petitioner. Apart from the substantive sentence, the Petitioner was directed to pay compensation of Rs.55,000/-. An Appeal was preferred by the Petitioner before the Sessions Court. The Appeal was admitted. Alongwith the Appeal, an Application was made for suspension of order of conviction. On the said application, an order was passed by the Court directing that sentence shall be suspended till the decision of the Appeal. Thereafter, on 11th May, 2006, an Application was moved by the first Respondent (original complainant) seeking a direction against the Petitioner to deposit the compensation amount. By the impugned order, the Appellate Court by placing reliance on the decision of this court in the case of **Maheshwar Dattatraya Kale Vs. Capt. Atul Wasudeo Divekar & Anr. (2006 ALL MR (Cri.) Page 544)** directed the Petitioner to deposit compensation amount immediately.

3. Shri Patil appearing for the Petitioner submitted that an Application for suspension of order of sentence was already disposed of by the Appellate Court and therefore, there was no occasion for the Appellate Court to direct the deposit of the

compensation amount on the basis of subsequent application made by the first Respondent. He submitted that no condition was earlier imposed while suspending the sentence. He submitted that the order impugned virtually amounts the review or recall of the earlier order passed suspending the sentence. He placed reliance on decision of Division Bench of this Court in the case of **Bhalchandra Ramchandra Deshpande Vs. State of Maharashtra and Anr (2005(4) Maharashtra Law Journal Page 379)** and submitted that the Sessions Court had no power to review or recall its own order. He submitted that the Sessions Court had no inherent jurisdiction. He also placed reliance on decision of the Apex Court in the case of **Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors. (2004(5) Supreme Court Cases Page 353)** and in particular paragraph No.7 thereto. He submitted that the Apex Court in the said case has deprecated the practise of obtaining the review or recall of the earlier order by resorting any innovative methods.

4. I have considered the submissions. The conviction of the Petitioner is for an offence under section 138 of the Negotiable Instruments Act, 1881. While convicting the Petitioner, the Trial Court has

directed the Petitioner to pay compensation of Rs.55,000/- as against the cheque amount of Rs.50,000/-. In the impugned order, the learned Trial Judge has placed reliance on decision of this court in the case of Maheshwar (supra). In paragraph No.9 of the said decision, this court has held thus:

> "9. What has been held by the Apex Court is that while suspending the sentence for the offence under section 138 of the said Act of 1881, it is advisable that the Court imposes a condition that the fine amount is remitted in Court within certain period. The Apex Court observed that if the fine amount is heavy, the court can direct at least a portion thereof to be remitted, as the convicted person wants the sentence to be suspended during the pendency of the appeal. The Apex Court was dealing with a case of an offence under section 138 of the said Act of 1881. The law laid down by the Apex Court will naturally apply also to a case where compensation has been ordered to be paid. **Thus when there is a conviction under section 138 of the said Act of 1881, while suspending substantive sentence, it is advisable that the**

> **Appellate Court imposes a condition of deposit of the compensation amount keeping in mind the object of section 138 of the said Code. When the amount of compensation is heavy, the court can direct deposit of a reasonable amount. Only in exceptional cases, the Appellate Court can grant interim protection without requiring deposit of compensation amount**".(Emphasis supplied)

By the impugned order, the Sessions Court has not modified the earlier order passed on application for suspension of sentence. The order merely directs the Petitioner to deposit the compensation amount.

5. The Sessions Court was dealing with a case under the said Act of 1881. The Apex Court in the case of **Dalmia Cement (Bharat) Ltd. Vs. Galaxy Traders & Agencies Ltd. & Ors. ((2001) 6 Supreme Court Cases Page 463)** has held that section 138 makes a civil transaction to be an offence by legal fiction. The Apex Court held that the object of the said provision is of making a special provision by incorporating a strict liability so far as a cheque is concerned. The Apex Court held that any effort to defeat the

objectives of law by resorting to innovative measures and methods is to be discouraged. There cannot be any dispute that there is no power of review vesting in the Sessions Court. In a recent decision in the case of Minu Kumari & Anr. Vs. State of Bihar & Ors. **(2006(2) Supreme Court Cases(Cri.) Page 310)** it was held that all courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administation of justice.

6. By this Petition, power of this court under Article 227 of the Constitution of India has been invoked. Power under Article 227 is a power of superintendence which is to be used for keeping the sub-ordinate courts in their own bounds. The remedy under Article 227 of the Constitution of India is an extra-ordinary remedy. It is well settled that power under Article 227 of the Constitution of India cannot be exercised for correcting every illegality. In the present case, the order impugned is consistent with the law laid down by this Court in the case of Maheshwar Dattatray Kale(supra). So far as power under section 482 of the said Code is concerned, it is well settled

that it is to be used very sparingly. The object of the order of the Sessions Court is to ensure that the Petitioner deposits compensation amount as directed to be paid by the Trial Court. In my view, this is not a case where jurisdiction either under Article 227 or under section 482 of the said Code should be invoked. Hence, the Petitions are rejected. On the prayer made by the learned Advocate for the Petitioner, time to deposit the amount as directed by the Sessions Court is extended by period of eight weeks from today.

JUDGE